

CONRAIL



13828
RECORDATION NO. Filed 1425

NOV 1 1982 - 11 45 AM

2-305A029

October 27, INTERSTATE COMMERCE COMMISSION

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D. C. 20423

No. NOV 1 1982

Date

Fee \$50.00

ICC Washington, D. C.

Dear Ms. Mergenovich:

Enclosed is an original and four counterparts of the document described below, to be recorded pursuant to Section 11303 of Title 49 U.S. Code.

This document is a Conditional Sale Agreement, a primary document dated October 1, 1982. This document covers equipment including two SW1500 Locomotives bearing Conrail unit numbers 9601 and 9602.

The names and addresses of the parties to the documents are as follows:

Akron & Barberton Belt Railroad Company *By*
P. O. Box 712
Barberton, OH 44203

Consolidated Rail Corporation *Seller*
1138 Six Penn Center Plaza
Philadelphia, PA 19104

A fee of \$50 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

John F. Fansmith, Jr., Esq.
Consolidated Rail Corporation
Law Department
1138 Six Penn Center Plaza
Philadelphia, PA 19104.

RECEIVED
NOV 1 11 36 AM '82
FEE OPERATION BR.
I.C.C.

Ms. Agatha Mergenovich
October 27, 1982

Page 2

A short summary of the document to appear in the index follows:

Conditional Sale Agreement between Akron & Barberton
Belt Railroad Company and Consolidated Rail
Corporation, dated October 1, 1982, and covering
equipment including two SW1500 Locomotives bearing
Conrail unit numbers 9601 and 9602.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Fansmith, Jr.", with a stylized flourish at the end.

John F. Fansmith, Jr., Esq.
Senior General Attorney

Enclosures: \$50 check, 5 signed agreements)

Interstate Commerce Commission
Washington, D.C. 20423

11/1/82

OFFICE OF THE SECRETARY

John F. Fansmith, Jr. Esq.
Consolidated Rail Corporation
Law Dept 1138 Six Penn Center Plaza
Philadelphia, PA. 19104

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/1/82 at 11:45am , and assigned re-
recording number(s). 13828

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

13828

CONDITIONAL SALE AGREEMENT

RECORDATION NO. Filed 1425

NOV 1 1982 - 11 45 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT dated October 1, 1982 is between Akron & Barberton Belt Railroad Company, a corporation, ("Buyer") and Consolidated Rail Corporation, a Pennsylvania corporation ("Seller").

WHEREAS, Seller is the owner of certain Equipment described in Schedule A attached ("the Equipment") and is willing to sell the Equipment to Buyer, and

WHEREAS, Buyer is willing to purchase the Equipment on the terms and conditions set forth herein.

1. The Seller hereby sells and the Buyer hereby purchases the Equipment on the terms and conditions set forth herein.

2. The purchase price is \$180 per day per unit for a total of five years which is to be paid quarterly in arrears in 20 equal installments commencing when the two units are delivered. Seller shall upon receipt of the final payment due under this Agreement provide Buyer with, and execute, such documents as Buyer may reasonably request to reflect such final payment.

3. Title to the Equipment (including title for the purposes of any tax credits or depreciation available under Federal and/or state tax laws) shall vest in Buyer upon execution of this Agreement. Any payment due on a date which is not a business day, shall be payable on the next succeeding

business day. ("Business days" are all days of any month excluding Saturdays, Sundays and Federal holidays.)

4. In addition to any remedies provided in this Agreement, Seller shall have all the rights provided to a secured party under Section 1168 of Title 11 of the United States Code and any successor provisions thereto.

5. As security for its obligation to pay the contract time price and its other obligations under this Conditional Sale Agreement, the Buyer hereby grants to the Seller a security interest in the Equipment described in Schedule A attached hereto which it is now buying, together with all attachments and additions, replacements and substitutions pursuant to this Agreement, and proceeds, including amounts payable under any insurance policy required by Paragraph 12(b) of this Conditional Sale Agreement, all hereinafter referred to as "collateral."

The Buyer will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303; and the Buyer will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement;

and the Buyer will promptly furnish to the Seller certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Seller.

6. Any installment not paid when due shall, at the option of Seller, bear late charges thereon calculated at the highest rate permitted by relevant laws, but in no event more than 18% per month.

7. Seller is selling the Equipment on an "as is, where is" basis; the Seller makes no warranties with respect to the Equipment except that the Seller declares that it has full power and authority to convey good title to the Equipment, free and clear of all liens, and so long as Buyer is not in default under this Agreement neither Seller nor any assignee or successor of Seller shall disturb Buyer's use and quiet enjoyment of the Equipment. Buyer will settle all claims, defenses, setoffs and counterclaims it may have of any nature against the manufacturer of the Equipment, including but not limited to defects in the Equipment and the like, directly with the manufacturer of the Equipment and not set up any such claim, defense, setoff or counterclaim against Seller or its assigns.

8. Buyer acknowledges that: Seller is in no way related to or connected with the manufacturer of the Equipment; Seller has no knowledge or information as to the condition or suitability for Buyer's purpose of the collateral; and Seller's decision to sell this Equipment is made in reliance on Buyer's warranties, agreements and covenants herein, in-

cluding Buyer's express agreement not to assert against Seller any claims, defenses, setoffs or counterclaims it may now or in the future have against the Equipment manufacturer.

9. Buyer warrants and represents: (a) the Buyer is justly indebted to Seller for the full amount of the foregoing indebtedness; (b) that except for the security interest granted hereby the collateral is free from and will be kept free from all liens, claims, security interests and encumbrances not permitted by Paragraph 10 of this Agreement; (c) that all information supplied and statements made by Buyer in any financial, credit or accounting statement, or application for credit prior to, contemporaneously with or subsequent to the execution of this Agreement with respect to this transaction are and shall be true, correct, valid and genuine; (d) Buyer has full authority to enter into this Agreement and in so doing it is not violating any law or regulation or agreement with third parties, and it has taken all such action as may be necessary or appropriate to make this Agreement binding upon it.

10. Buyer agrees: (a) to defend at Buyer's own cost any action, proceeding or claim affecting the collateral; (b) to pay reasonable attorneys' fees and other expenses incurred by Seller in enforcing its rights after any default by Buyer; (c) to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the collateral after the effective date of this Agreement which would impair Seller's security interest set

forth in Paragraph 5 above unless contested by Buyer in good faith and through appropriate means; (d) to do everything necessary or expedient to preserve or perfect the security interest of Seller; (e) that it will not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or without the prior written consent of Seller, and notwithstanding Seller's claim to proceeds, sell, rent, lend, encumber or transfer any of the collateral, except as provided in Subparagraphs (g) and (h) of this Paragraph 10; (f) that Seller, after giving Buyer reasonable notice, may enter upon Buyer's premises at any reasonable time to inspect the collateral at Seller's expenses; (g) Buyer may, with the prior written consent of Seller, which consent shall not be unreasonably withheld, lease or permit the use of the Equipment or any units thereof (such lease or use to be subject to the rights and remedies of the Seller hereunder) to or by a lessee or user incorporated in the United States of America (or in a state thereof or the District of Columbia), upon lines of railroad owned or operated by the Buyer or such lessee or user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which the Buyer, such lessee, such user, or such railroad company or companies have trackage rights or railroad of connecting and other carriers in the usual interchange of traffic or in through or non-through service, but only upon the subject to all terms and conditions of this Conditional Sale Agreement.

11. In the event that any unit of the Equipment during the term of this Agreement shall become lost; stolen; destroyed; permanently rendered unfit for use; or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Agreement, or by any other government or governmental entity resulting in the loss of possession by the Buyer for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), Buyer shall so notify Seller. On the payment date next following the date of such Event of Loss, Buyer shall pay to Seller the remaining unpaid purchase price for such unit of Equipment, determined as of such payment date, together with any unpaid amount due on or prior to such date, whereupon Buyer's obligation to pay further amounts for such unit of the Equipment shall cease, but Buyer's obligation to pay for all other units of the Equipment shall remain unchanged.

12. (a) Subject to the limitations set forth in Paragraph 11 of this Agreement, all risk of loss of, damage to or destruction of the collateral shall at all times be on Buyer except for loss, damage or destruction resulting from a negligent act or omission of Seller, its officers, employees, agents, representatives, assignees, and/or successors.

(b) Buyer shall, at its own expense, during the term of this Conditional Sale Agreement, insure the Equipment against (i) physical loss or damage for an amount that shall in no event be less than the remaining unpaid purchase price;

and (ii) general public liability for death or bodily injury and damage to property of others, in an amount of not less than \$25,000,000 for death or bodily injury and \$500,000 for property damage. Seller shall not withhold consent from any reasonable changes in the insurance coverage or deductibles provided for by this Subparagraph (b). Buyer shall have the right to insure the Equipment, for its own account, for the amount by which its fair market value exceeds the coverage required hereunder.

(c) All insurance policies required hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interests of Buyer and Seller and protect Buyer and Seller in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Equipment, (iii) provide that the insurance carrier give at least 30 days' prior notice in the event of cancellation or material alteration in coverage.

(d) The proceeds of any physical damage insurance received by Seller or any assignee of Seller shall be paid to Buyer: (i) in the case of a Casualty Occurrence with respect to any unit of the Equipment upon payment by Buyer as specified in Paragraph 11, or (ii) upon the loss, damage or destruction of any unit of the Equipment which does not constitute a Casualty Occurrence, upon the receipt from Buyer of a certificate to the effect that such unit of the Equipment has been repaired and restored (which certificate shall be accompanied by satisfactory evidence of such repair and

restoration), provided that so long as any default by Buyer or Event of Default shall be continuing hereunder, Seller shall be entitled to apply such proceeds against Buyer's liability hereunder. Buyer shall furnish Seller with certificates or other evidence of compliance with this Paragraph 12 as may reasonably be requested.

13. The following are the Events of Default under this Agreement which will allow Seller to take such action under this Paragraph and under Paragraph 14 as it deems necessary:

(a) Any of Buyer's obligations to Seller under this Agreement is not paid within ten business days after such payment date; provided that Seller has notified Buyer that such payment has not been received,

(b) Buyer breaches any warranty or provision hereof, or of any other instrument or agreement delivered by Buyer to Seller in connection with this transaction,

(c) Buyer ceases to do business as a going concern,

(d) Any proceeding shall be commenced by or against Buyer for any relief which includes, or might result in, any modification of the obligations of Buyer hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than laws which do not permit any readjustments of the obligations of Buyer hereunder), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise

rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Buyer under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Buyer or for the property of Buyer in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be later.

If Buyer shall be in default hereunder, all amounts then owing by Buyer to Seller under this Agreement shall, if Seller shall so elect, become immediately due and payable. This acceleration of all indebtedness, if elected by Seller, shall be subject to all applicable laws, including laws as to rebates and refunds of unearned charges.

14. So long as any obligations are owed by Buyer to Seller under this Agreement, Seller shall have all the rights and remedies provided by this Agreement and provided a secured party under applicable law. Buyer agrees that upon Buyer's default Seller by itself or its agent, may upon notice to Buyer enter into any premises or upon any land (including access roads and rights of way) owned, leased or

otherwise under the actual control of Buyer or any agent of Buyer where the collateral may be or where Seller believes the collateral may be, and using reasonable force with respect to the collateral and any property connected to the collateral, disassemble, render unusable, disconnect and separate all collateral from any other property and/or repossess and remove all or any item of the collateral, provided that such self-help may be accomplished without any breach of the peace and without any damage to the property of Buyer. Buyer will not hinder or delay Seller or its agent in any way. Seller may require Buyer to assemble the collateral and return it to Seller at a place on the railroad lines of Buyer to be designated by Seller which is reasonably convenient to both parties. The security interest, granted hereby shall continue effective irrespective of any retaking and redelivery of the collateral to Buyer until all amounts secured thereby are fully paid in money.

Unless Buyer otherwise agrees in writing after default, Seller will give Buyer reasonable notice of the time and place of any public sale of the collateral or reasonable notice of the time after which any private sale or other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed by registered mail, postage prepaid, to the address of Buyer shown herein at least fifteen business days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale,

selling and the like shall include reasonable attorneys' fees and other reasonable legal expenses. Buyer understands that Seller's rights are cumulative and not alternative and that Buyer will remain fully liable for any deficiency remaining after disposition of the collateral.

15. Any waiver by either party in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default of another time. No modification or change in this Agreement shall be binding against either party unless in writing and signed by the party against whom such modification or changes is sought to be enforced.

16. The nondiscrimination clauses attached hereto as Appendix A are incorporated herein by reference and form a part hereof.

17. Any provisions hereof contrary to, prohibited by, or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof. Buyer acknowledges receipt of a true copy and waives acceptance hereof.

18. The address of the Buyer is 43 Second Street, N.W.
Barberton, Ohio 44203.

The address of the Seller is Room 1310, Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention: Assistant Treasurer-Financing.

19. Buyer and Seller agree that this Agreement and the rights of the parties hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

(Corporate Seal)

Attest: T. D. McGEHEAN
Assistant Secretary

By JAW
Title ASSISTANT TREASURER - FINANCING

CONSOLIDATED RAIL CORPORATION

By W. A. Young
Title General Manager
Akron & Barberton Belt Railroad Co.

(Corporate Seal)

Attest: _____
Assistant Secretary

Glenn E. Starcher
GLENN E. STARCHER, Notary Public
My Commission Expires March 8, 1985

COMMONWEALTH OF PENNSYLVANIA :

:SS

COUNTY OF PHILADELPHIA :

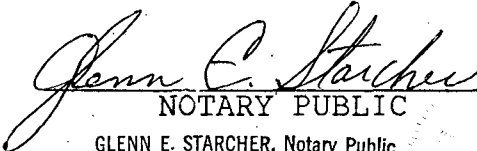
On this 25th day of October, before me personally appeared J. A. Warner, to me personally known, who being by me duly sworn, says that he is ASSISTANT TREASURER-FINANCING of Consolidated Rail Corporation, and that said instrument was signed by him on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carol Ann Corbett
NOTARY PUBLIC

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires April 4, 1986

STATE OF Ohio :
:SS
COUNTY OF Summit :

On this 4th day of October, before me personally appeared W. A. Frederick, Jr., to me personally known, who being by me duly sworn, says that he is General Manager, Akron & Barberton Belt Railroad Co., and that said instrument was signed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


NOTARY PUBLIC
GLENN E. STARCHER, Notary Public
My Commission Expires March 8, 1985

Schedule A

(2) SW1500 Locomotives

Conrail
Unit Numbers

9601
9602

Akron & Barberton
Belt Railroad Company
Unit Numbers

1501
1502